

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

BRANDON M. WASHBURN,

Petitioner,

Case No. 21-cv-1093-pp

v.

JUDGE JOSEPH SCASCIA,

Respondent.

**ORDER REQUIRING PETITIONER TO PAY FILING FEE OR FILE A MOTION
FOR LEAVE TO PROCEED WITHOUT PREPAYING FILING FEE**

On September 20, 2021, the petitioner, who is representing himself, filed a petition for writ of *habeas corpus* under 28 U.S.C. §2241 challenging his civil commitment. Dkt. No. 1. He has not paid the \$5.00 filing fee. On November 24, 2021, Magistrate Judge William Duffin recommended that the court dismiss the petition under Civil Local Rule 41(c). Dkt. No. 4. This order provides the next steps in the case.

In the portion of the petition asking the petitioner to specify the decision or action he was challenging, the petitioner stated that he “was not scheduled a conditional release hearing in a timely matter,” and that he “was over sentenced as well by multiple years.” Dkt. No. 1 at 2. The petitioner indicated that on October 22, 2020, he had filed a petition for conditional release in Dodge County Circuit Court, and at the time he filed his *habeas* petition, had not received a decision. Id. at 5. The petition asserts two grounds for relief: (1) that the petitioner’s civil commitment constitutes cruel and unusual punishment, and (2) that his conditional release “is being prolonged by not

allowing [him] to present [his] case in a timely matter [sic].” Id. at 6. As relief, the petitioner “want[s] to be released and the rest of [his] commitment to be terminated,” as well as “\$100,000—\$140,000 from the State [of] Wisconsin and Dodge County for the years [he has] been imprisoned past what [he] should have been.”

The day after the petitioner filed his federal *habeas* petition, the clerk’s office sent the petitioner a form requesting his consent or refusal to proceed with a magistrate judge and a letter requesting that the petitioner pay the filing fee or file a motion to proceed without prepaying the filing fee. Dkt. No. 2. A week later, that mailing was returned to the court as undeliverable. Dkt. No. 3.

On November 24, 2021, Judge Duffin filed a report recommending that this court dismiss the petition and the case. Dkt. No. 4. Noting that the petitioner had not paid the filing fee and that the court’s September 21, 2021 mailing had been returned as undeliverable, Judge Duffin observed that the petitioner “ha[d] not had any further contact with the court.” Id. at 1. Judge Duffin found that “[t]he VINELink website [did] not indicate [the petitioner] as being in custody at the Dodge County Detention Center, and the Wisconsin Department of Corrections’ database indicate[d] that [the petitioner] is on active community supervision.” Id. at 1-2 (internal citations omitted). For that reason, Judge Duffin recommended that this court dismiss the petition and the case without prejudice under Civil Local Rule 41(c) (E.D. Wis.).¹ Id. at 2. Judge Duffin explained that “[b]ecause the court [did] not have a current mailing address for [the petitioner], th[e] order [would] not be mailed.” Id.

¹ Under Civ. L.R. 41(c), “[w]henever it appears to the Court that the plaintiff is not diligently prosecuting the action . . . the Court may enter an order of dismissal with or without prejudice.”

Because it appears that the petitioner is no longer detained under a civil commitment order, his *habeas* claims likely are moot. But the petitioner did not receive the court's consent form, instructions regarding the filing fee and Judge Duffin's report and recommendation. In an abundance of caution, the court will give the petitioner another opportunity to pursue this case. If the petitioner wishes to proceed with this case, he must pay the filing fee, or file a motion requesting the court's leave to proceed without prepaying the filing fee, in time for the court to *receive* it by the end of the day on **May 27, 2022**. If the court does not receive the petitioner's fee or motion by the end of the day on May 27, 2022, the court will deny the petition and dismiss the case.

The court **ORDERS** that the petitioner must either pay the \$5 filing fee, or file a motion for leave to proceed without prepaying the filing fee, in time for the court to receive it by the end of the day on **May 27, 2022**.

The court **ORDERS** that if the court has not received the \$5 filing fee or a motion for leave to proceed without paying it by the end of the day on May 27, 2022, the court will dismiss this case under Civil L.R. 41(c) for the petitioner's failure to diligently prosecute the case.

Dated in Milwaukee, Wisconsin this 16th day of May, 2022.

BY THE COURT:



HON. PAMELA PEPPER
Chief United States District Judge